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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**[PROPOSED] ORDER, CASE NO. CV 11 5232 (SBA)**

## 1 [FIRST ALTERNATIVE]

2 Having considered Defendants' motion to transfer this action or in the alternative dismiss or  
 3 stay this action and strike the class allegations, this Court finds that both the first-to-file rule and 28  
 4 U.S.C. § 1404(a) support transfer of this action in light of the already pending litigation in the  
 5 Southern District of New York in which a Lead Plaintiff has already been appointed.

6 The first-to-file rule allows a district court to transfer, stay, or dismiss an action when a  
 7 "similar complaint has already been filed in another federal court." *Alltrade, Inc. v. Uniweld*  
 8 *Products, Inc.*, 946 F.2d 622 (9th Cir. 1991). "The doctrine is designed to avoid placing an  
 9 unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting  
 10 judgments." *Church of Scientology of California v. United States Dep't of Army*, 611 F.2d 738, 749  
 11 (9th Cir. 1979). The first-to-file rule was developed to "serve[] the purpose of promoting efficiency  
 12 well and should not be disregarded lightly." *Id.* at 750.

13 The Ninth Circuit has held that, in applying the first-to-file rule, courts must look to three  
 14 threshold factors: (1) the order in which the actions were filed; (2) similarity of the parties; and (3)  
 15 similarity of issues. *Alltrade*, 946 F.2d at 625. If the threshold factors are met, the court should  
 16 apply the rule unless certain equitable exceptions apply. *Id.* at 628 ("The circumstances under which  
 17 an exception to the first-to-file rule typically will be made include bad faith, anticipatory suit, and  
 18 forum shopping.").

19 28 U.S.C § 1404(a) also provides an independent mechanism for transfer, separate from the  
 20 first-to-file rule. *See Alioto v. Hoiles*, No. C 04-1395, 2004 U.S. Dist. LEXIS 21398, \*16 (N.D. Cal.  
 21 Oct. 12, 2004) (finding transfer appropriate under the first-to-file rule but noting that "[t]ransfer is  
 22 also warranted under 28 U.S.C. § 1404(a)"). A party seeking transfer under § 1404(a) must establish  
 23 "(1) that venue is proper in the transferor district; (2) that the transferee district is one where the  
 24 action might have been brought; and (3) that the transfer will serve the convenience of the parties  
 25 and witnesses and will promote the interests of justice." *See Gerin v. Aegon USA, Inc.*, No. C 06-  
 26 5407, 2007 U.S. Dist. LEXIS 28049, \*9-10 (N.D. Cal. Apr. 3, 2007); *see also* § 1404(a) ("For the  
 27 convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil  
 28 action to any other district or division where it might have been brought.").

This Court finds that Defendants have satisfied the three *Alltrade* factors and that no equitable exceptions apply. This Court further finds that the 28 U.S.C. § 1404(a) factors independently support transfer. Defendants' motion is therefore granted. This action is to be transferred to the U.S. District Court for the Southern District of New York.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

THE HON. SAUNDRA BROWN ARMSTRONG  
United States District Court Judge

## 1 [SECOND ALTERNATIVE]

2 Having considered Defendants' motion to transfer this action or in the alternative dismiss or  
 3 stay this action and strike the class allegations, this Court finds that the first-to-file rule supports  
 4 dismissal in light of the already pending litigation in the Southern District of New York in which a  
 5 Lead Plaintiff has already been appointed.

6 The first-to-file rule allows a district court to transfer, stay, or dismiss an action when a  
 7 "similar complaint has already been filed in another federal court." *Alltrade, Inc. v. Uniweld*  
 8 *Products, Inc.*, 946 F.2d 622 (9th Cir. 1991). The remedy is at the court's discretion. *Id.* at 623.  
 9 "The doctrine is designed to avoid placing an unnecessary burden on the federal judiciary, and to  
 10 avoid the embarrassment of conflicting judgments." *Church of Scientology of California v. United*  
 11 *States Dep't of Army*, 611 F.2d 738, 749 (9th Cir. 1979). The first-to-file rule was developed to  
 12 "serve[] the purpose of promoting efficiency well and should not be disregarded lightly." *Id.* at 750.  
 13 The Ninth Circuit has held that, in applying the first-to-file rule, courts must look to three threshold  
 14 factors: (1) the order in which the actions were filed; (2) similarity of the parties; and (3) similarity  
 15 of issues. *Alltrade*, 946 F.2d at 625. If the threshold factors are met, the court should apply the rule  
 16 unless certain equitable exceptions apply. *Id.* at 628 ("The circumstances under which an exception  
 17 to the first-to-file rule typically will be made include bad faith, anticipatory suit, and forum  
 18 shopping.").

19 This Court finds that Defendants have satisfied the three *Alltrade* factors and that no  
 20 equitable exceptions apply. Defendants' motion is therefore granted. This action is to be dismissed  
 21 pursuant to this Court's discretion under the first-to-file rule.

22  
 23 IT IS SO ORDERED.

24  
 25 DATED: \_\_\_\_\_

26 THE HON. SAUNDRA BROWN ARMSTRONG  
 27 United States District Court Judge

## 1 [THIRD ALTERNATIVE]

2 Having considered Defendants' motion to transfer this action or in the alternative dismiss or  
 3 stay this action and strike the class allegations, this Court finds that the first-to-file rule supports a  
 4 stay and that Plaintiffs' class allegations should be stricken pursuant to Rule 12(f) of the Federal  
 5 Rules of Civil Procedure in light of the already pending litigation in the Southern District of New  
 6 York in which a Lead Plaintiff has already been appointed.

7 The first-to-file rule allows a district court to transfer, stay, or dismiss an action when a  
 8 "similar complaint has already been filed in another federal court." *Alltrade, Inc. v. Uniweld*  
 9 *Products, Inc.*, 946 F.2d 622 (9th Cir. 1991). The remedy is at the court's discretion. *Id.* at 623.  
 10 "The doctrine is designed to avoid placing an unnecessary burden on the federal judiciary, and to  
 11 avoid the embarrassment of conflicting judgments." *Church of Scientology of California v. United*  
 12 *States Dep't of Army*, 611 F.2d 738, 749 (9th Cir. 1979). The first-to-file rule was developed to  
 13 "serve[] the purpose of promoting efficiency well and should not be disregarded lightly." *Id.* at 750.  
 14 The Ninth Circuit has held that, in applying the first-to-file rule, courts must look to three threshold  
 15 factors: (1) the order in which the actions were filed; (2) similarity of the parties; and (3) similarity  
 16 of issues. *Alltrade*, 946 F.2d at 625. If the threshold factors are met, the court should apply the rule  
 17 unless certain equitable exceptions apply. *Id.* at 628 ("The circumstances under which an exception  
 18 to the first-to-file rule typically will be made include bad faith, anticipatory suit, and forum  
 19 shopping.").

20 This Court finds that Defendants have satisfied the three *Alltrade* factors and that no  
 21 equitable exceptions apply.

22 Additionally, Rule 12(f) authorizes courts to strike from a pleading "any redundant,  
 23 immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The purpose of a Rule 12(f)  
 24 motion is "to dispose of spurious issues before trial to avoid the unnecessary expenditure of time and  
 25 money." *Castaneda v. Fila USA, Inc.*, NO. 11-CV-1033, 2011 U.S. Dist. LEXIS 109720, \*4 (S.D.  
 26 Cal. Aug. 10, 2011) (citing *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983)).  
 27 In *Brody v. Homestore, Inc.*, the court dismissed a complaint pursuant to Rule 12(f) where the  
 28 plaintiff "failed to meet the procedural requirements of the Private Securities Litigation Reform Act

1 (“PSLRA”) prior to filing the present action as a class action.” CV 02-08068, 2003 U.S. Dist.  
2 LEXIS 17267, \*8 (C.D. Cal. Aug. 11, 2003). Likewise here, this Court finds that Plaintiffs’ class  
3 allegations should be stricken for failure to satisfy the procedural requirements of the PSLRA.

4 Defendants’ motion is therefore granted. This action is to be stayed pursuant to this Court’s  
5 discretion under the first-to-file rule until the resolution of *McKenna v. SMART Technologies, Inc*,  
6 11 CV 7673 (S.D.N.Y. filed Jan. 26, 2011), the first-filed action. Plaintiffs’ class allegations are  
7 hereby stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

8  
9  
10 IT IS SO ORDERED.

11  
12 DATED: \_\_\_\_\_

13 \_\_\_\_\_  
14 THE HON. SAUNDRA BROWN ARMSTRONG  
United States District Court Judge